Copyright and author's rights: A look at history

Copyright and Author's Rights: A Look at History

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ROSENCRANTZ AND GUILDENSTERN ARE DEAD — so a modern playwright tells us, and so is Shakespeare. Thereby hangs our tale. If Shakespeare were alive, could he prevent the wrenching of his classic tragedy into a "very funny, very brilliant . . . a most remarkable and thrilling play," as one critic says? Perhaps he could and perhaps he could not. The answer to the question — to simplify matters in the extreme — would turn on whether he or someone else held the copyright. But quickly to the point.

Copyright in American law is an author's, rather than a publisher's, right. Yet to say that copyright gives the author certain exclusive rights for a limited period of time in connection with his published works is misleading. The law confers the rights not upon the author, but upon the copyright owner, who may or may not be the author and who is usually the publisher.

While the interests of the author and the publisher coincide in some respects, they differ in others. Both are interested in profits. The author, as the creator of a work, however, has an interest in maintaining the integrity of his work and in protecting his reputation in connection with it. He has, in short, a creative interest, an interest which in civil law countries is called the moral right. But the creative interest of an author in his work has had no role in American jurisprudence. There is as yet no developed body of law granting the author as author rights in connection with his published work apart from rights he is entitled to as copyright owner.

Notwithstanding the absence of authors' rights in the common law, there was a time when the continuing rights of an author in his published works were almost certainly recognized in England, separate and apart from copyright.

The time was from about 1557 to 1710, the time of the stationer's copyright in England. This copyright, the predecessor of the modern American as well as English statutory copyright, was created by the Stationers' Company, the London Company which consisted of members of the book trade, printers, bookbinders, and booksellers. The Stationers' Company received its royal charter in 1557, and thereafter had a monopoly of printing and publishing which enabled it to develop copyright as a means of maintaining order in the trade and protecting published works from piracy. Copyright remained in private hands for some hundred and fifty years.

In its role as regulator of the book trade, the Stationers' Company was greatly aided by the need of the British government for censorship. The continuous religious struggle during the sixteenth and seventeenth centuries in England made censorship a governmental policy, and the stationers were an appointed instrument to aid in carrying out that policy. The government was indifferent to copyright as property, but the principal acts of censorship, the Star Chamber Decrees of 1586 and 1637, the licensing ordinances during the Interregnum, and the Licensing Act of 1662,[1] provided sanctions for the stationer's copyright. Such sanctions were useful for censorship purposes, and they also served as a *quid pro quo* to the stationers for their role in policing the press.

The early English copyright was thus a private affair of the Stationers' Company regulated not by the common law, but by guild ordinances and government acts of censorship. The company granted the copyright, developed it, and limited it to company members. The copyright itself was deemed to exist in perpetuity and protected all printed matter, maps, portraits, official forms and even statutes, as well as writings.

Unlike today's copyright, the stationer's copyright was a publisher's right, and, being limited to members of the company, it was not available to authors. Almost certainly it was limited in scope: it provided the right to publish a work, and no more, for it was, literally, a right to copy. The copyright owner did not own the subject work and was not free to alter it. Thus, there was little need for the author in those early days to be concerned with protecting the integrity of his work, as there was nothing to do with it other than to print it. The problem of author's rights did not become a significant issue until the

[1] 13 & 14 Car. II, c. 33.

eighteenth century, and then only because the booksellers made it so in an effort to perpetuate their monopoly after passage of the Statute of Anne.

The stationer's copyright was superseded by the statutory copyright in 1710, the date of the Statute of Anne.[2] It is of interest today because the modern copyright functions much the same as the stationer's copyright did, with one major difference: the stationer's copyright was a publisher's right; the modern copyright is an author's right.

The rights of authors during the time of the stationer's copyright seem to have had little attention; in addition to the problem of whether the author had continuing rights in his work, one might have asked whether he had any rights at all. During the Elizabethan period authors were held in low esteem. It was charged that "authors as a whole, including professionals like Nashe, never quite made up their minds whether they were professionals or amateurs."[3] Authors had no role in developing and shaping the stationer's copyright, and the present assumption seems to be that the stationer's copyright precluded a recognition of any rights of the author.[4]

Still to say that no rights of the author were recognized during the time of the stationer's copyright is not quite true. The relationship between authors and stationers existed on a complex and sophisticated level over a long period of time. Despite the company's rule, renewed on 7 December 1607, limiting the right of entrance of copies in the register (the form copyright took) to members of the company,[5] there are recorded occasions of the grant of copyright to an author for his own works. On 1 March 1618 license was given to Reynold Smith "to ymprint his table & Computacon that he hath made and to sell them without interruption of the Company";[6] and on 5 September 1631 John Standish "became a Sutor to the Mr. Wardens & assistants for leave to print" his book, "the psalms of David accorded to the french & Germaine verses and tunes." The Court of Assistants, the governing body of the Stationers' Company, granted "that an im-

[2] 8 Anne, c. 19.

[3] Miller, *The Professional Writer in Elizabethan England* (1959), p. 140.

[4] *Ibid.*, 137. See also Aldis, "The Book Trade, 1557–1625," *Cambridge History of English Literature*, IV (1909), 458.

[5] *Records of the Court of the Stationers' Company, 1602–1640* (William A. Jackson, ed. 1957), p. 31, hereafter referred to as Court Book C.

[6] *Ibid.*, 107.

pression of a 1000 of them shall be printed at the Charge of the author." For this privilege, Standish was to give only "a quarterne of the said books vnto the Company," for after the impression was sold, the copyright was to go to the partners of the English Stock.[7]

That relations between stationers and authors were cooperative rather than competitive is illustrated again by an entrance of 19 November 1661 in the registers of the Stationers' Company to Henry Herringman, with the following notation: "This entrance was importunately desired to be cross't out by Herringman, who, as he had no hand in printing it, so he protests not to have knowne the nature of it sooner, & that he did it onely to secure it to ye author on his request."[8] Unfortunately, as with most entries, the details are unavailable to us, but the practice of stationers entering copies for others was apparently not an unusual one. After 1640 there are several entries which contain the statement that the work is published by a person, occasionally the author, other than the stationer to whom the copy was entered.[9]

This practice was probably the result of cooperation with the author of some work for which the copyright was not financially attractive, to enable the author to have it published by underwriting the cost of printing. Evidence of such an arrangement appears in reference to a theological work by Henry More, which appeared in 1675 under the title *Henrici Mori Cantabrigiensis Opera Theologica*.[10] More's account of the terms of the agreement clearly implies that he is seeking a publisher, and that the arrangement should prevent the publisher from suffering a loss. The impression was to be five hundred copies, of which More was to have twenty-five without cost. Of the remainder, he apparently had the alternative of buying one hundred copies outright at fifteen shillings each, with the hope of selling at the regular publisher's price of twenty shillings; or he could purchase only so many books as he could dispose of, but pay the price the bookseller paid, sixteen shillings per copy.[11]

[7] *Ibid.*, 231–32.

[8] Eyre & Rivington, *A Transcript of the Stationers' Registers, 1640–1708 A.D.*, II (1913), 304, hereafter referred to as Eyre & Rivington.

[9] *Ibid.*, I, 335, 392; *Ibid.*, II, 166, 222, 265, 239, 307; *Ibid.*, III, 27.

[10] McKerrow, "A Publishing Agreement of the Late Seventeenth Century," *The Library*, 4th ser., XIII (1932–33), 184.

[11] The account reads as follows: "I hav 25 copies that cost me nothing, and buy but 100 copies of ye 500, and not at such a rate as they usually sell such small Im-

This type of arrangement, or a similar one, was probably fairly common, for there are examples of books with imprints showing that the book was printed for the author, who presumably bore the expense of publication.[12] Most are books of limited interest, "mathematical text-books, picture books, and the like," [13] in which copyright would be unattractive financially. Even so, such examples further indicate that the relationship between authors and stationers was not a simple one.

The complexity of this relationship, the unique conditions under which it occurred, and the long period of time over which it existed preclude any simple answers to the question of the rights of the author. Of the two basic types of rights, property rights and personal rights, it is the former which the stationers most clearly and obviously recognized for authors. The basic aspect of property rights for an author was the right to be paid for his work, and the evidence indicates that this was accepted by the stationers from the beginning. This does not mean, of course, that piracy from authors did not exist under the stationer's copyright — as it did later, also, under statutory copyright; the career of the most infamous literary pirate in the history of the book trade, Edmund Curll, extended some thirty years after the passage of the Statute of Anne in 1709.[14] But during the Elizabethan period, "the appropriation of literary rights without permission or payment which we call piracy, in so far as it can be proved, was largely concerned with the works of dead authors, or of men whose rank would have forbidden them to receive payment for their books." [15]

As early as 11 November 1559 there is evidence of an explicit recognition of the author's right to payment. The grantee in a "License to John Day" was given the privilege of printing "*the Cosmographicall glass* compiled by William Cunningham doctor in Physicke as also duringe the tyme of seven yeares all suche bookes and Workes as he

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pressions at the booksellers, yt is twice the value of what they cost at the printing house, but onely half as much againe in yt proportion that 3 is to 2, so yt if a book for example stand them at the printing house papyr and printing 10*s*. I shall pay fifting [*sic*] shillinges, and I thought this was a better way than to pay one fifth part lesse then yc booksellers would sell it for. But if I hav any book myself it [will] not prove very much I hoope." *Ibid*., 184–5.

[12] Shaaber, "The Meaning of Imprint in Early Printed Books," *The Library*, 4th ser., XXIV (1944), 120.

[13] *Ibid*., 137.

[14] Pollard, *Shakespeare's Fight with the Pirates* (1920), p. 33.

[15] *Ibid*., 32.

hath Imprinted or hereafter shall imprinte beinge deuysed compiled or set oute by any learned man at the paymente costes and Charges onely of the saide John Daye. . . ." [16] In 1620 "John Bill's Representation of the *History of Doctor Fulke's Answer to the Rhemish Testament*," [17] written about 1588, recounts how George Bishop subsidized the author for nine months and paid him forty pounds for the copyright of his work.[18] In 1602 there is a record of a dispute between a Mr. Burbie and a Mr. Dexter concerning the printing of the *English Schoolmaster*, wherein it was ordered, "And all charges as well to the Author as otherwise to be equally borne betweene them pte and pte like," [19] and in 1619, when Stationers Thomas Jones and Lawrence Chapman printed a work without the consent of the author's wife, the Court of Assistants ordered them to pay her twenty shillings "for a recompence." [20]

But the clearest example of recognition by the Stationers' Company of legal liability to an author for printing his works without compensation is found in an agreement entered into on 4 March 1615 between the company and James Pagett of the Middle Temple, who sold the company a certain number of books called "A promptuarye or Repertoyre generall of the yeare books of the Common Lawe of Englande." [21] Pagett was apparently one of three authors of the work, with Thomas Ashe and Sergeant Jones.[22] The company paid three hundred pounds for the books, and Pagett entered into a covenant to save the company harmless from the other authors, *i.e.*, "Tho. Ashe and his assignes."

The right of an author to receive payment for his works is such an elementary right that the major point can be easily overlooked: it was necessary for a stationer to obtain the author's permission to publish his work, and thus for copyright, even though the copyright was granted by the Stationers' Company. Several orders of the Court of Assistants substantiate the point. On 6 December 1625 there is an

[16] Arber, *A Transcript of the Stationers' Registers, 1554–1640 A.D.*, II, (1875), hereafter referred to as Arber.

[17] Entered on December 9, 1588, to G. Bishop. Arber, II, 510.

[18] Arber, III, 39.

[19] *Records of the Court of the Stationers' Company 1576 to 1602* (W. W. Greg and E. Boswell, ed. 1930), p. 88, hereafter referred to as Court Book B.

[20] Court Book C, 119.

[21] Court Book C, 82.

[22] *Id.*, n. 1.

order pertaining to certain works by a Mr. Farnaby. Raffe Rounthaite had entered the works, which he printed for Philemon Stephens and Christopher Meredith.[23] It was ordered that the entry be crossed out and the copy be left to Mr. Farnaby "to dispose of to some other of the Company to whom he will." Stephens and Meredith were ordered to "give Mr. Farnaby for 750 which was last printed to recompence him for the printing of it against his will 45 s. to be paid the last day of Candlemas term." [24] On 10 May 1632 there is an entrance in the Register to John Waterson "crost out by his owne consent and resigned to the Author" ; [25] and on 19 January 1632 there is an entry in Court Book C where the author complained of Mr. Harrison's printing his work, whereupon Harrison resigned his interest.[26] On 4 June 1638 we find the following instructive entry: "Mr. Clarke brought mr. Chillingworths booke called the Religion of Protestants a Safe Way to Saluation (wch booke was printed at Oxford) & desired the same might be entred to him haueing the Authors and the printers, Consent wch being Showed in Cort. It was ordered that the said booke should be entred vnto him accordingly." [27]

The stationers, in acknowledging a duty to pay the author and to obtain his permission before acquiring a copyright, recognized the author's initial property right in his works. To that extent, their conduct presaged what was later to become known as the common law copyright of the author, the right of first publication. The difficult problem, however, is whether the stationers recognized the author's personal rights. Part of the difficulty is semantic, for the term "rights" may be used with any number of meanings — for example, to mean an inchoate right, a legal right, or a natural right.

When we speak of a well-defined body of rights, such as property rights, there is little difficulty. The common law has traditionally been oriented to property rights and has always given them definitive protection.

Personal rights are more comprehensive than property rights, and such rights have been less favored by the common law. Thus, the term "personal rights" is often used to indicate either an inchoate

[23] See Arber, IV, 123.
[24] Court Book C, 191.
[25] Arber, IV, 282.
[26] Court Book C, 245.
[27] Court Book C, 310.

right or a natural right, rather than a legal right. Used as meaning an inchoate right, the term designates a relationship which is a matter of special concern and which should be, or may be, but is not definitively protected by law. Used to mean natural right, the term designates a relationship which should be, and in fact may be, protected by law by reason of the nature of the relationship. For the most part, the term "author's rights" is here used to indicate an inchoate right, or a natural right, or both.

The personal rights of the author as author, however, are unique, because of the unique nature of his work. The author — here used as the exemplar of the artist — is a creator, and as such his work differs from that of others. First, his work constitutes contributions to the culture of society. Since his contributions to society are unique and particularly valuable, it is to the interest of society to give special protection to the author's personal interest in those contributions. The author's relationship to his works is such that he should be given a degree of continuing control sufficient to enable him to protect the integrity of his work. The point is, perhaps, more graphically illustrated by reference to the painter: a distorted painting is more readily manifest than a distorted manuscript, and few would dispute the propriety of enabling the artist to prevent the distortion of his paintings, or the sale of reproductions of his paintings which had been distorted. So with the author, whose creations are no less an extension of his personality. These rights of the author and artist are personal to them to protect their personality, but are based on the fact of their creation; therefore these personal rights can best be identified as creative rights, which can be defined as continuing rights of the author necessary to insure and maintain the integrity of the work he has created by preventing its distortion by others.

The answer to the question of the stationers' recognition of the author's creative rights is not so readily apparent as is the answer to the problem of his property rights. Clearly, there was in Elizabethan England no well-defined body of creative rights enforceable in courts of law or even in the Stationers' Court of Assistants. But just as clearly, the stationers respected the unique interest an author as author has in his works, even though they perhaps did so as a matter of self-interest: as businessmen, the Stationers were primarily interested in themselves and their profits; any creative rights of the author they recognized were a by-product of the copyright they shaped to their

own ends and purposes. The initial question, then, is whether such rights were consistent with the aims and purposes of the stationers and their copyright.

The answer is yes, for the stationer's copyright was literally a right to copy — that is, a right to reproduce a given written work for sale. Its basic purpose was to provide order for the book trade by providing publishers with the exclusive right to publish a work without competition as to that work. Sanctions for copyright came from the Stationers' Company, for it was the company, not the author, which granted the copyright. From the stationers' viewpoint, copyright was protection against rival publishers, not against authors; and the existence of continuing rights of the author in his work was consistent with the existence of copyright for the stationer.

The extent of these rights of the author is not clear; but it is almost certain that the stationers recognized the right of the author, and by implication, only the author, to alter and revise his work, despite the existence of copyright. An entrance of 24 October 1586 of Dr. Bright's *A Treatise of Melancholie* to Master Byshop and John Wyndett contains the following note: "Memorandum that master Doctour Bright hathe promised not to medle with augmenting or alteringe the saide book vntill th(e) impression which is printed by the said John Windet is sold." [28] Had the stationers not recognized the right of an author to alter his work, the securing of Doctor Bright's promise "not to medle" would have served no purpose. That the point involved the right of the author, rather than his power, is supported by those entries of works "newly altered and enlarged" by the author,[29] which presumably entitled one to an additional copyright. On 5 June 1640, for example, there is an entry to Master Mann, senior, and Jonas Mann of "The sermons, or certayne sermons preached in Oxfordshire, the first by master Robert Clever, and the Two last by master John Dobb heretofore published and nowe newly corrected by the Authors wherevnto is added another *sermon* of master Clever on Psalme 51." [30] And on 9 December 1611 there is an entrance to Samuell Macham of a work in Latin by "Joseph Hall Theologiae Doctore" followed by the following entrance: "*Item* Entred for his Copy the same booke to be printed in Englishe yf ye Author please

[28] Arber, II, 457.
[29] Arber, III, 406.
[30] *Ibid.*, 435.

to haue it translated." [81] This entrance, incidentally, is an example of a common practice during this period, indicating the limited nature of the stationer's copyright and, by implication, a recognition of the author's creative right. The practice was that of entering a work before it was written, or more often translated. Such entries carry the condition that the work is to be approved by the licensing authorities before it is printed.

These examples, of course, are not conclusive as to the existence of an author's creative rights. Neither are they exhaustive — other entries of similar import are found in the registers, and there is no way of knowing how many unrecorded instances may have occurred. While we cannot assume that the stationers invariably respected the author's creative interest, neither did they always enter their copies in the company register, nor did they always respect each other's rights.

Many variable factors undoubtedly influenced the stationer in his attitude toward a particular author and in his actions with regard to any particular work, of which the rules, regulations, and customs of the company were only a part. Not the least of these additional factors would be the nature of the work involved, its lasting value, its potential market, and its acceptability to the licensing authorities. A sermon was undoubtedly treated differently from a ballad, and a play differently from a dictionary.

Moreover, entries in the stationers' registers do not inform us of the underlying transactions. Thus, on 7 June 1608 John Fflaskett assigned to John Bill "A Dictionarie in Ffrench and Englishe Collected first by C. Holyband and sythene(e) Augmented or Altered by Randall Cotgrave." [82] A reasonable inference here is that Cotgrave "augmented or altered" the work with the consent of Holyband; but perhaps he did not — we do not know. Still, the fact of the notation indicated that there was no unwarranted meddling with the author's work.

In addition to the entries and orders in the Stationers' Company records, there is one further factor of broader scope which tends to confirm recognition of authors' rights by the stationers: the nature of the conveyance from the author to the publisher.

Of two points about the author's conveyance, we can be certain:

[81] *Ibid.*, 473.
[82] *Ibid.*, 381.

It was not a conveyance of copyright, but it was more than the sale of a manuscript.

The author could not, of course, convey a copyright, for only the Stationers' Company granted copyright. But the conveyance had to be more than the mere sale of a manuscript; the stationer was not interested in the manuscript for its intrinsic value, but only for the purpose of publishing. Again, however, the author could not convey the right to publish, for the printing of a work was subject to the laws of censorship. The ostensible dilemma to which these factors lead is easily resolved by a return to the basic premise — that the stationers recognized a duty on their part to pay the author and to obtain his permission to publish his work. That permission, from a legal standpoint, was negative, rather than affirmative: the author's conveyance was, in effect, a negative covenant, that is, a contract not to object to the publication of the work, rather than a contract granting a right to publish it.

The point is illustrated by Milton's contract for the publishing of *Paradise Lost*.[38] The contract recites that John Milton "hath given, granted, and assigned, and by these (presents) doth give, grant, and assigne, unto the said Sam[ll]. Symons, his executors and assignes, All that Booke, Copy, or Manuscript of a Poem intituled Paradise lost . . . now lately Licensed to be printed. . . ." This language, similar to the language of a deed, implies complete ownership of the work, but its effect was to convey title to the manuscript actually turned over to the purchaser. The essence of the contract is the covenant on the part of Milton. "And the said John Milton . . . doth covenant with the said Sam[ll]. Symons . . . That hee . . . shall at all tymes hereafter have, hold, and enjoy the same, and all Impressions thereof accordingly, without the lett or hinderance of him, the said John Milton, . . . And that the said Jo. Milton . . . shall not printe or cause to be printed, or sell, dispose, or publish, the said Booke or Manuscript, or any other Booke or Manuscript of the same tenor or subject, without the consent of the said Sam[ll]. Symons. . . ."

The significant point is that Symons required Milton to promise that he, as author, would not interfere with the publishing of the work. Such promises would hardly have been necessary if copyright had been deemed to give the copyright owner all rights in connection with the copyrighted work.

[38] The contract is transcribed in Masson, *Life of John Milton*, VI (1946), 509.

A more sophisticated example of the conveyance of the author is found in the sale by James Thomson, the poet, of his works, which were the subject of litigation in *Millar v. Taylor*[34] and *Donaldson v. Beckett*,[35] the two landmark cases in English copyright law. The contracts are discussed in a report of the *Donaldson* case,[36] and are revealing because there are two conveyances, one from the author to a bookseller, and one from a bookseller to another bookseller. The first contract, from Thomson, the author, to Millar, the bookseller, was in 1729, whereby Thomson "did assign to Millar, his executors, administrators, and assigns, the true copies of the said tragedy and poem, and the sole and exclusive right and property of printing the said copies for his and their sole use and benefit, and *also all benefit of all additions, corrections, and amendments which should be afterwards made in the said copies.*"[37] The second contract from Millan, a bookseller, to Millar in 1738, conveying other works of Thomson originally sold to Millan, included "all the right, title, interest, property, claim, and demand of the said John Millan to or in the said copies." By virtue of these agreements, "Andrew Millar became lawfully entitled to all the profits arising by the printing and publishing of the several poems . . . and to all the sole and exclusive property and right of printing copies of them, and of vending and disposing of the same."[38]

The emphasis on the right of printing and the benefit of additions and alterations of the author in the conveyance from Thomson contrasted with the emphasis on profits in the conveyance from Millan highlights the limited nature of the stationer's copyright. More important, however, the implication here that the author retained sufficient control over his work to make additions, corrections and amendments — note the language, "which should be afterwards made" — notwithstanding the ownership of copyright by another is a clear example of the recognition of authors' creative rights. Further, it points up the value of analyzing the author's conveyance in terms of a negative covenant rather than the sale of his work. The distinction is more than one of semantics, and it is helpful because it presents a unique example of a chattel being conveyed not for its intrinsic

[34] 4 Burr. 2303, 98 Eng. Rep. 201 (K.B. 1769).
[35] 2 Bro. P.C. 129, 1 Eng. Rep. 937, 4 Burr. 2408, 98 Eng. Rep. 257 (H.L. 1774).
[36] 2 Bro. P.C. 129, 1 Eng. Rep. 837, 838.
[37] *Id.* (emphasis added).
[38] 2 Bro. P.C. 129, 130, 1 Eng. Rep. 837, 838.

value, but to enable the purchaser to exercise the right which is actually being conveyed. The manuscript is more than a symbol, of which a stock certificate is an example, but less than the object of purchase, of which a book itself is an example. Therefore, to say that the conveyance of the author was the sale of his work is to imply that the author divested himself of all his interest and rights in his works. To say that the conveyance is essentially a negative covenant is to imply, first, that the author retained rights in his work, and, second, that the agreement not to object to the publishing of the work is an agreement not to object to the publishing of the work as the author wrote it. In other words, the most reasonable inference is that the author retained certain rights in connection with his work despite the existence of the copyright in the stationer.

The reasonableness of this inference is supported by other factors, individually insignificant but collectively persuasive. The stationers, as businessmen, had no reason to alter an author's work; from their standpoint, there was only one thing to do with a manuscript — publish it. Altering the work was not only unnecessary for the protection against piracy of published works for which copyright was designed — it was inimical to copyright. The stationer's copyright was deemed to exist in perpetuity, was often owned jointly, frequently sold and assigned. The idea that the copyright owner was the owner of the work to do with as he pleased would have almost surely precluded the negotiability of copyright, for the value of the copyright was determined by the marketability of the book. To maintain its value, a book had to be a good copy — that is, one which was faithful to the author's creation as he had written it. Moreover, since altered works were eligible for copyright, the practice whereby copyright owners could change the work presented a real danger that other stationers could, by altering or hiring a hack to alter a particular work, acquire a competing copyright. Mutual respect for each other's rights required that the stationers not interfere with the works to which they held the copyright.

The integrity of copyright, of paramount importance to the stationers, depended in large measure upon the integrity of the underlying work. The most effective way to maintain that integrity was to deny the copyright owner the right to meddle with the work itself in any way. Any altering of the work was to be done by the author, and as to this right of the author, the stationers probably had little

choice. They had no jurisdiction over the author and could not control his activities in regard to his work except by means of contract, which explains the promises exacted from authors in their conveyance to the booksellers. There were, then, very practical reasons for the stationers to recognize the author's creative rights, to protect the integrity of their copyright by maintaining the integrity of the copyrighted work and also to protect their copyrights from a subtle form of piracy.

The evidence available indicates that the English stationers recognized the author's property rights. They recognized also other rights of the author, rights which can be called creative rights, although the term undoubtedly did not occur to them. That such rights may not have been fully developed need hardly concern us, for their existence at all shows that the stationers were aware of the continuing interest of the author in his works by reason of the fact that he created them. And it is this point which confirms the other evidence as to the limited scope of the stationer's copyright.

Unfortunately, the stationers' recognition of the author's creative rights did not survive the statutory copyright. While the stationer's copyright was a publisher's right, the statutory copyright became an author's right. As such, it came to embrace all the rights of an author in connection with his published work.

The effect of the change of copyright from a publisher's right to an author's right has been more significant than is generally recognized. Not only did it foreclose the development of law protecting the author's creative interest, it turned copyright into a monistic concept which was deemed to be primarily for the protection of the author. Yet copyright continued, and continues to function primarily in the interest of the publisher. This combination of ostensible purpose and actual function has resulted in an unsatisfactory body of copyright law and in a continual enlargement of the monopoly of copyright. The ever growing trend toward greater protection is manifest in the copyright bill now before Congress.

Copyright is not or should not be treated as a monistic concept. It fulfills different purposes for different groups, for the author, the publisher, and the public. There is no reason why the rights and duties of these various groups under copyright law should be the same. Yet until the premise that copyright is primarily an author's

right is somehow rebutted, the probability is that rights and duties under copyright law will continue to be deduced from it.

A major step in rebutting this premise would be an implicit recognition of the author's creative interest, a step which would make the obvious immediately apparent — the interest of the author and the interest of a publisher in a given work do not wholly coincide. A consideration of how to define the rights of the author as opposed to the rights of the publisher would be necessary. Thus the first step toward a concrete realization of the idea that copyright is not one thing, but several, would have been taken. The next step would be to give explicit consideration to the rights and duties of the third major group under copyright law, the public, a group whose rights have always been treated as incidental. The value of developing a body of law recognizing the author's creative interest, then, is that it would impose a new perspective of copyright, a perspective which would require a reconsideration of its aims, its purposes, and its functions.

The salutary results here suggested are by no means certain if a law recognizing the author's creative interest is developed. Such results, however, would be logical, they would be feasible, and they would be desirable. At least we know that if the increasingly complex problems of copyright brought about by the communications revolution are to be satisfactorily resolved, copyright law can no longer be the result of deductions from the monistic premise that copyright is wholly an author's right. And it is somewhat ironic that in modifying this premise, better and more complete protection for the author and the public would be provided. No less ironic is that for a solution to twentieth century problems, we find precedent in the sixteenth and seventeenth century practices of the Stationers' Company in London.

Incidentally, Rosencrantz and Guildenstern are not dead. They are alive and playing on Broadway at the Eugene O'Neill Theatre.[89]

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[89] This article is based on material in the author's book, *Copyright in Historical Perspective*, to be published by The Vanderbilt University Press in November 1968.